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No. _____ OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1996

****

JAMES R. LEDBETTER, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

****

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT

****

PETITION FOR WRIT OF CERTIORARI

****

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July 1997

13 pp

Question Presented

Does the United States Constitution, especially the Fourth Amendment, permit the inclusion of a quantity of illegal drugs for sentencing purposes when the seizure of that quantity was suppressed?

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JAMES R. LEDBETTER, Petitioner, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in this proceeding on March 27, 1997.

Opinion Below

The opinion by the Court of Appeals

in Case No. 96-7016, is not published. Because of its brevity, the full text is set forth as Petitioner's Statement Of The Case, to-wit:

Statement Of The Case

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs. No. 96-7016
(D.C No.CR-95-43-B)
(E.D. Okla.)

JAMES R. LEDBETTER,

Defendant-Appellant.

ORDER AND JUDGMENT*

Before BALDOCK, EBEL,and LUCERO,Circuit Judges

Defendant James R. Ledbetter, called "Randy," was convicted by a jury on one count of drug trafficking and two firearms offenses.[1]

* This order and judgment is not binding precedent, except under the doctrines of law of

the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir.R. 36.3.

1 After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See Fed.R.App.34(f) and 10th Cir.R.34.1.9. The case is therefore ordered submitted without oral argument.

He appeals from the sentence imposed on the trafficking charge, arguing that a large quantity of drugs should have been excluded from consideration. We exercise jurisdiction under 28 U.S.C.§ 1291 and 18 U.S.C. §3742(a)(1), and affirm.

Defendant's sentence on the trafficking charge was based on 42.23 grams of methamphetamine seized from his car during a traffic stop, and 73.16 grams of methamphetamine found in his mother's garage in a locked matchbox inscribed with name "Randy." Defendant was not present when officers searched his mother's garage and did not consent to their search of the locked matchbox.

Relying on United States v. Salinas-Cano, 959 F.2d 861 (10th Cir. 1992), he argues that his mother's consent to search her garage did not extend to a locked box bearing his name. He contends that the 73.16 grams of methamphetamine found in the matchbox should be excluded from the total used to calculate his sentence on the trafficking charge, and his sentence reduced accordingly.

We conclude that Salanis-Cano--a case challenging a conviction--does not apply to the sentencing argument defendant seeks to raise here. See 959 F.2d at 862 & n.1. "This circuit has followed the approach of balancing the effect of applying the exclusionary rule at sentencing against the costs of impairing effective and suitable punishment of proven offenders and unduly complicating sentencing procedures." United States v. Jessup, 966 F.2d 1354, 1356 (10th Cir. 1992)(footnote

omitted)(sentencing guidelines case, citing United States v. Graves, 785 F.2d 870, 873 (10th Cir. 1986) (pre-sentencing guidelines case)). We have observed that unless a defendant shows that illegally obtained evidence was procured by arresting officers in an attempt to enhance his sentence, applying the exclusionary rule would not achieve any deterrent effect on illegal searches to outweigh the detrimental effect on the court's ability to determine an appropriate sentence caused by excluding the evidence. See id. at 1356-57. In the absence of any such showing by defendant in this case, the 73.16 grams of methamphetamine recovered from the matchbox would be relevant at sentencing even if the search of the matchbox were held to be illegal.

Defendant makes no such showing on appeal, and there is no indication in his materials that he made this argument in

the district court at all. On our review of the record, we find no plain error. See United States v. Olano, 507 U.S. 725 (1993).

AFFIRMED.

ENTERED FOR THE COURT

Carlos F. Lucero
Circuit Judge

The United States District Court for the Eastern District of Oklahoma, the court of the first instance, was vested with jurisdiction of this criminal case by 18 U.S.C.§ 3231.

And, thus, its judgment including Mr. Ledbetter's conviction and 20 year prison sentence was thus affirmed by the Tenth Circuit.

Jurisdiction

The Order and Judgment of the Court of Appeals in accordance with its opinion was entered March 27, 1997, then on April 15, 1997, the Court of Appeals denied

Petitioner's timely filed Motion For Rehearing. This petition is being filed within ninety (90) days of the date of that denial. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1).

Constitutional Provision

The Fourth Amendment in pertinent part:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ...

THERE ARE NO STATUTES, ORDINANCES OR REGULATIONS INVOLVED

Statement Of The Case

The United States District Court for the Eastern District of Oklahoma, the court of the first instance, was vested with jurisdiction of this criminal case by 18 U.S.C. § 3231. See Opinion Below.

Reasons For Granting The Writ

The very idea that a three judge panel of a United States Court of Appeals would rule". . . the 73.16 grams of methamphetamine recovered from the matchbox would be relevant at sentencing *even if the search of the matchbox were held to be illegal."* is shocking.

That such a court would do so is outrageous.

This Court should grant the Writ and correct this violation of the Fourth Amendment.

Argument

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .

Respectfully submitted,

Ronald H. Mook

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Counsel for Petitioner

CERTIFICATE OF SERVICE

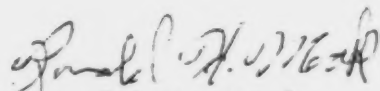
I certify that I mailed three (3) true and correct copies of this Petition For Writ Of Certiorari to:

Paul G. Hess, Esq., Assistant United States Attorney, Room 333 U.S. Courthouse, Muskogee, OK 74401

and

The Solicitor General of the United States
U. S. Department of Justice
Washington, D. C. 20530

on July 8, 1997, with postage thereon prepaid.



Ronald H. Mook